

FILED
IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

2004 JAN 28 P 3:22

EILEEN HELLER, Trustee

v. EILEEN HELLER, BARRY ROGOFF, INEZ DOLIN, JULIE ROSENFIELD, ELIZABETH HELLER, PAUL HELLER, JOHN HELLER, ROBERT M. HELLER and COMMISSIONER OF INTERNAL REVENUE SERVICE	Plaintiff) DISTRICT COURT OF MASS.)) CIVIL NO. 03 12250RGS) Defendants)
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MOTION TO VACATE ORDER OF DISMISSAL, DISMISS THE COMMISSIONER OF
 INTERNAL REVENUE SERVICE AS A PARTY DEFENDANT AND TO REMAND CASE
TO THE ESSEX PROBATE AND FAMILY COURT DEPARTMENT

Now comes the Plaintiff, by and through her attorney, and moves this Honorable Court
 to 1) vacate the Order of Dismissal dated January 14, 2004, 2) dismiss the Commissioner of
 Internal Revenue Service as a party Defendant and 3) remand this case to the Essex County
 Probate and Family Court Department.

The United States assents to this motion to vacate said Order of Dismissal and to its dis-
 missal as a party as there has been no waiver of sovereign immunity. Remand of this case will
 allow the matter to go forward against the individual parties.

Respectfully Submitted,

EILEEN HELLER, TRUSTEE

By her Attorney:


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2004 JAN 28 P 3-24

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U.S. DISTRICT COURT
DISTRICT OF MASS.

FRANCIS T. MAYO
GEORGE T. ANDREWS

January 23, 2004

Office of the Clerk
United States District Court for
The District of Massachusetts
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: Heller, Trustee v. Heller, et al.
Civil Docket No. 03 12250RGS

Dear Sir:

Enclosed is Plaintiff's Motion to Vacate Order of Dismissal, to Dismiss the Commissioner of Internal Revenue Service as a Party Defendant and to Remand Case to the Essex County Probate and Family Court Department. Also enclosed is Certification of Consultation relative to said motion. Please bring this matter to the attention of the Court.

Thank you for your cooperation.

Very truly yours,

FRANCIS T. MAYO

FTM:jl
Enc.

cc: Lydia D. Bottome, Esquire
U.S. Department of Justice

Barbara Healy Smith, Esquire
Asst. U. S. Attorney

Robert Welch, Esquire